All American Sprinkler, Inc. and Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO. Case 22-CA-19912

October 31, 1994

DECISION AND ORDER

By Members Devaney, Browning, and Cohen

Upon a charge filed by the Union on May 25, 1994, the General Counsel of the National Labor Relations Board issued a complaint on August 9, 1994, against All American Sprinkler, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On September 19, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On September 22, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 31, 1994, notified the Respondent that unless an answer were received by September 7, 1994, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a company with an office and place of business in Easton, Pennsylvania, had been engaged in installation and maintenance of automatic sprinkler systems. During the 12-month period preceding its cessation of operations in about November 1993, the Respondent, in the course and conduct of its business operations, performed services valued in ex-

cess of \$50,000 in states other than the State of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 2(b) of the Act.

All Journeymen Sprinkler Fitters and Apprentices employed by the Respondent who are engaged in all work as set forth in Article 18 of the 1991–1994 collective-bargaining agreement between the National Fire Sprinkler Association, Inc. (NFSA) and the Union, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

Since about March 1991 and at all material times, the Union has been the exclusive collective-bargaining representative of the unit, and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in an assent and interim agreement dated March 26, 1991, wherein the Respondent agreed to be bound by the terms of the collective-bargaining agreement, effective from April 1, 1991, to March 31, 1994, between NFSA and the Union. At all times material, based on Section 9(a) of the Act, the Union has been the designated exclusive collective-bargaining representative of the unit.

By letter dated January 11, 1994, and delivered about March 7, 1994, the Union requested that the Respondent furnish the Union with certain information. This information is necessary for and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about January 11, 1994, the Respondent has failed and refused to furnish the Union this requested information.

Article 4 of the 1991–1994 collective-bargaining agreement provides for the monthly remission by the Respondent to the Union of union membership dues deducted from employees' weekly pay no later than the 15th day of the subsequent month. Articles 19–22 of the collective-bargaining agreement require that the Respondent make monthly contributions to the National Automatic Sprinkler (NASI) Welfare Fund, NASI Pension Fund, NASI-Local 669 Industry Education Fund, and the Supplemental Pension Fund. Since about November 15, 1993, the Respondent failed to continue in effect all the terms and conditions of the 1991–1994 agreement by failing to remit union membership dues for the month of October 1993 to the Union and by failing to make contributions to the

funds described above for the month of October 1993. The Respondent engaged in this conduct without the Union's consent. These terms and conditions of employment are mandatory subjects for the purpose of collective bargaining. The Union learned of this conduct on or after December 5, 1993.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed to provide the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union the information requested. In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing to remit to the Union dues for the month of October 1993 that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations, we shall order the Respondent to remit such withheld dues to the Union as required by the agreement, with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). Finally, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required contributions to the NASI Welfare Fund, NASI Pension Fund, NASI-Local 669 Industry Education Fund, and the Supplemental Pension Fund for the month of October 1993, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in Ogle Protection Service, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in New Horizons for the Retarded, supra.1

Because the Respondent has ceased operations, we shall order that a copy of the notice be mailed to all unit employees.

ORDER

The National Labor Relations Board orders that the Respondent, All American Sprinkler, Inc., Easton, Pennsylvania, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing and refusing to provide information requested by Road Sprinkler Fitters, Local Union No. 669, U.A., AFL-CIO, that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. The unit includes the following employees:

All Journeymen Sprinkler Fitters and Apprentices employed by the Respondent who are engaged in all work as set forth in Article 18 of the 1991–1994 collective-bargaining agreement between the National Fire Sprinkler Association, Inc. (NFSA) and the Union, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

- (b) Failing to honor all the terms and conditions of the collective-bargaining agreement between the National Fire Sprinkler Association, Inc. and the Union, effective from April 1, 1991, to March 31, 1994, to which the Respondent agreed to be bound, by failing to remit union membership dues or failing to make contractually required contributions to the National Automatic Sprinkler (NASI) Welfare Fund, NASI Pension Fund, NASI-Local 669 Industry Education Fund and the Supplemental Pension Fund.
- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) Provide the Union the requested information.
- (b) Honor all the terms and conditions of the collective-bargaining agreement between the National Fire Sprinkler Association, Inc. and the Union, effective from April 1, 1991, to March 31, 1994, to which the Respondent agreed to be bound.
- (c) Remit to the Union the union membership dues deducted from the employees' pay for the month of October 1993, with interest as prescribed in the remedy section of this decision.
- (d) Make all delinquent contributions to the National Automatic Sprinkler (NASI) Welfare Fund, NASI Pension Fund, NASI-Local 669 Industry Education Fund

¹ The record does not indicate whether the industry education fund is an industry promotion fund and therefore a permissive subject of

bargaining for which no remedy is warranted. Finger Lakes Plumbing & Heating Co., 254 NLRB 1399 (1981), and cases cited there. We leave resolution of that issue to the compliance stage.